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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION

Case No. 07-cv-5944 SC

MDL No. 1917

This Document Relates to:

Sharp Electronics Corp., et al. v. Hitachi Ltd., et al., No. 13-cv-1173;

Sharp Electronics Corp., et al. v. Koninklijke Philips Elecs., N.V., et al., No. 13-cv-2776;

Electrograph Systems, Inc., et al. v. Technicolor SA, et al., No. 3:13-cv-05724-SC;

Electrograph Systems, Inc., et al. v. Hitachi, Ltd., et al., No. 3:11-cv-01656-SC;

DIRECT ACTION PLAINTIFFS' OPPOSITION TO THE THOMSON DEFENDANTS' JOINDER TO CO-DEFENDANTS' OUTSTANDING MOTIONS FOR SUMMARY JUDGMENT, MOTION TO EXCLUDE EXPERT TESTIMONY, AND MOTIONS *IN LIMINE*

Date: None set
Place: Courtroom 1
Judge: Hon. Samuel Conti

Siegel v. Hitachi, Ltd., No. 11-cv-05502;

Siegel v. Technicolor SA, No. 13-cv-05261;

Best Buy Co. v. Hitachi, Ltd., No. 11-cv-05513;

Best Buy Co. v. Technicolor SA, No. 13-cv-05264;

Interbond Corp. of America v. Hitachi, Ltd., et al., No. 3:11-cv-06276-SC;

Interbond Corp. of America v. Technicolor SA, et al., No. 3:13-cv-05727-SC;

Office Depot, Inc. v. Hitachi, Ltd., et al., No. 3:11-cv-06276-SC;

Office Depot, Inc. v. Technicolor SA, et al., No. 3:13-cv-05726-SC;

Costco Wholesale Corp. v. Technicolor SA, et al., No. 13-cv-05723;

P.C. Richard & Son Long Island Corp., et al. v. Hitachi, Ltd., et al., No. 3:12-cv-02648-SC;

P.C. Richard & Son Long Island Corp., et al. v. Technicolor SA, et al., No. 3:13-cv-05725-SC;

Schultze Agency Services, LLC on behalf of Tweeter Opco, LLC and Tweeter Newco, LLC v. Hitachi, Ltd., et al., No. 3:12-cv-2649-SC;

Schultze Agency Services, LLC on behalf of Tweeter Opco, LLC and Tweeter Newco, LLC v. Technicolor SA., et al., No. 3:13-cv-05668-SC;

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, No. 3:13-cv-05262;

Sears, Roebuck and Co. and Kmart Corp. v. Chunghwa Picture Tubes, Ltd., No. 11-cv-05514-SC;

Tech Data Corp. and Tech Data Product Management, Inc. v. AU Optronics Corp., et al., No. 13-cv-00157.

The undersigned Direct Action Plaintiffs ("DAPs") oppose Defendants Thomson Consumer Electronics, Inc. and Thomson SA's (collectively, "Thomson") untimely joinder to fourteen motions filed by other defendants.

LG Electronics started what appears to be a trend, when on June 4, 2015—months after the Court's deadlines for filing dispositive motions, *Daubert* motions, and motions *in limine*—it attempted to join a host of its co-defendants' previously filed motions without seeking leave of the Court or providing any explanation for its delay. DAPs opposed that joinder as improper, untimely, and prejudicial. (*See* MDL Dkt. No. 3883.) Now, nearly three weeks after even LGE's dilatory filing, Thomson attempts the same maneuver.

The Court's deadlines for filing dispositive motions were in November of 2014. Thomson filed one summary judgment motion and signed on to thirteen others, of the 38 total motions that all of the defendants filed. December 5, 2014 was the Court's deadline for filing *Daubert* motions; Thomson signed on to one motion on that date and did not sign on to the other jointly filed by defendants. Finally, on February 13, 2015, the Court's deadline for filing motions *in limine*, Thomson signed on to sixteen of its co-defendants' motions *in limine*, and opted not to sign on to an additional eleven.

Now, without explanation for its months-long delay (or the three week delay between LGE's joinder and its own), Thomson seeks to join an additional *fourteen* motions. Thomson's joinder should be stricken because, like LGE, Thomson has not established good cause for its failure to comply with the Court's scheduling order. In respect of the Court's time, the DAPs will not repeat here all of the arguments stated on pages 1-3 of their Opposition to LGE's Joinder (*see* MDL Dkt. No. 3883), but rather incorporate them here by reference. *See, e.g.*, *Briglia v. Horizon Healthcare Servs., Inc.*, No. 03-6033, 2007 WL 1959249, at *3-4 (D.N.J. July 3, 2007) (rejecting joinders to summary judgment motions filed four weeks after the dispositive motion deadline); *Big Top USA, Inc. v. The Wittern Grp.*, 183 F.R.D. 331, 343 (D. Mass. 1998) (denying defendant's untimely joinder to summary judgment motions filed one week after the dispositive motion deadline); *Burney v. Woodford*, No. CIV S-05-1849, 2009 WL 3246575, at *1 (E.D. Cal. Oct. 6, 2009) (opposition to summary judgment motion untimely where no good cause shown for missing filing deadline); *In re Veritas Software Sec. Litig.*, No. C-03-0283, 2006 WL 463509, at *4 (N.D. Cal. Feb. 24, 2006) (tactical decisions to delay filing do not constitute "excusable neglect"; motion filed fifteen days after the deadline rejected).[1]

Accordingly, the undersigned Direct Action Plaintiffs respectfully request that the Court deny Thomson's untimely attempt to join other defendants' summary judgment motions, *Daubert* motion, and motions *in limine*.

DATED: July 2, 2015 By: /s/ *Craig A. Benson*

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[1] Indeed, Thomson itself has sought to chastise other parties in this case for not acting diligently in circumstances where those parties acted far more diligently than Thomson has here. (*See* MDL Dkt. No. 2783-2 (Thomson Defendants' Opposition to DAPs' Motion to Issue a Letter of Request for International Judicial Assistance to Take Depositions in France, arguing that DAPs had not acted diligently in filing their Motion one week *before* the close of discovery).)

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E-FILING ATTESTATION

I, Craig A. Benson, am the ECF user whose ID and password are being used to file the Direct Action Plaintiffs' Opposition to the Thomson Defendants' Joinder to Co-Defendants' Outstanding Motions for Summary Judgment, Motion to Exclude Expert Testimony, and Motions *in Limine*. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each listed counsel above has concurred in this filing.

Dated: July 2, 2015

/s/ Craig A. Benson
Craig A. Benson